

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1999

IN THE MATTER OF:

Served June 5, 1979

Application of ERNEST H. BANNISTER,)
SR., for Authority to Perform)
Charter Operations Pursuant to)
Contract with Friendship Heights)
Village Council)

Case No. AP-79-06

By application filed May 7, 1979, Ernest H. Bannister, Sr., trading as Bannister Transportation Service, 1/ (Bannister) seeks temporary authority 2/ to perform charter operations pursuant to a contract with Friendship Heights Village Council (FHVC). The proposed service is a one-vehicle shuttle within the community of Friendship Heights, Md., 3/ consisting of a circuit of about one mile. The vehicle would seat about 20 passengers, and the shuttle would operate on a 20-minute schedule with a two-minute layover at each of six stops, Monday through Saturday from 7 a.m. to 7 p.m., with no direct charge to the passengers.

Although the application itself did not properly address the issues of immediate and urgent need for service and availability of any carrier capable of meeting such need, essential elements to establish a basis for a grant of temporary authority, it did include a copy of a signed contract

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- 1/ The application indicated that Mr. Bannister, a sole proprietor, was trading as Bannister Transportation Ltd. At the public hearing held on the matter, applicant was allowed to amend the application to reflect the name Ernest H. Bannister, Sr., trading as Bannister Transportation Service.
- 2/ The application was filed on our form for applicants seeking a certificate of public convenience and necessity, but the application clearly specifies that service is contemplated for only a two-month period. See Order No. 1996, served May 11, 1979.
- 3/ Although Friendship Heights is not an incorporated municipality, it is a precisely defined Special Tax District under Maryland law.

between Bannister and FHVC, and a letter from FHVC to Bannister indicating that evidence material to the determination of such issues was available. The Commission determined that the public interest warranted a hearing on the matter rather than dismissal of the application for technical deficiencies. An expedited hearing was scheduled by Order No. 1996, served May 11, 1979, and a copy of said order was served on all carriers holding certificates which would authorize the proposed service. The hearing was held May 18, 1979, and no party appeared in opposition.

A representative of FHVC testified that there are approximately 7,000 residents of Friendship Heights Village. A study conducted in the fall of 1978 and subsequent public hearings indicated a desire by Village residents for a shuttle-bus service through the community, linking it to nearby public transportation and a local shopping center. FHVC advertised for bids, proposing an experimental two-month trial period to be paid out of Village funds rather than by individual passenger fares, and received proposals from Bannister, Omnibus Corporation, an uncertificated carrier, and Beltway Limousine Service, Inc., a certificated carrier. Beltway, however, would be restricted to performing operations in vehicles having a manufacturer's designed seating capacity of fifteen persons or less and thus is not able to meet FHVC's need for a vehicle seating approximately 20 passengers.

Mr. Bannister testified that he is the owner of a 20-passenger bus and that he is willing and able to provide the requested service. He stated that he registered as a sole proprietor in the District of Columbia on November 1, 1978. While Commission records show him as president of Bannister Enterprises, Inc. (BEI) a certificated carrier, Mr. Bannister stated that he is no longer affiliated with that entity, and has severed all connections with it. In his capacity as a sole proprietor in Bannister Transportation Service, he is providing "limousine" service in vehicles having a seating capacity not in excess of six passengers including the driver, an operation that is presumably exempt from the certification requirements of the Compact. See Compact, Title II, Article XII, Section 1(c). Bannister also stated that, on occasion, he has provided a "limousine-type" service for groups of people in his 20-passenger vehicle between points in the District of Columbia. There are no distinctive permanent markings or names appearing on the bus, and no mention of Bannister's sole proprietorship. A removable metallic unit allows any desired name to be inserted and posted on the side of the bus.

The Compact, Title II, Article XII, Section 4(d)(3) authorizes the Commission to grant temporary authority where there is an immediate and urgent need for service and no carrier service capable of meeting such need. The Commission finds that applicant has sustained this burden of proof. The Commission notes, however, that the evidence of record raises significant questions about applicant's fitness, willingness and ability

to conform to the provisions of the Compact and the rules and regulations thereunder. The Commission has always considered the issue of fitness in temporary authority proceedings as to safety, compliance with the law, capacity to provide service and any other aspect of fitness deemed material in a particular proceeding. However, unlike proceedings in which a certificate of public convenience and necessity is sought, an affirmative finding of fitness is not a separate statutory criterion, and evidence of unfitness may be weighed in light of the urgency of the expressed public need. Here, the record clearly indicates an immediate and urgent public need for a service which is very limited both territorially and temporally. We find that this need outweighs our concern about Mr. Bannister's fitness and the application shall be granted subject to the conditions and limitations set forth below. The grant of temporary authority, however, does not give rise to any presumption of applicant's fitness or that a corresponding application for permanent authority will be granted.

It appears that now, at least, there is no overt common control between BEI and Bannister Transportation Service although, exercise of authority in BEI by Mr. Bannister, subsequent to registration of the sole proprietorship, was contrary to Title II, Article XII, Section 12 of the Compact which requires Commission approval of common control. Any future activity by Mr. Bannister on behalf of BEI would require approval by the Commission. Furthermore, the evidence of record discloses operations by Bannister Transportation Service that require Commission certification, namely charter service between points in the Metropolitan District in vehicles having a seating capacity of more than eight passengers in addition to the driver. Title II, Article XII, Section 1(c) of the Compact exempts certain limousine service in vehicles seating eight passengers or less from the Commission's certification requirements, but use of applicant's 20-passenger bus in local service does require certification. Applicant is cautioned that the only service authorized to be performed in the Metropolitan District in its 20-passenger vehicle is the temporary authority operation for FHVC.

Applicant will be directed to file a certificate of insurance in its own name pursuant to Commission Regulation 62 and to comply with the provisions of Commission Regulations 68-03 and 68-04, concerning vehicle identification, which state:

- 68-03. There shall be displayed on the front of each vehicle operated pursuant to temporary authority the name, or trade name, of the carrier under whose authority the vehicle is being operated, and the date the temporary authority expires. The temporary authority notation shall be in the following form: "WMATC TA expires . . .". Nothing herein shall prohibit display of such additional identification as is not inconsistent herewith.

68-04. The display of name and number prescribed in this part shall be in letters and figures in sharp color contrast to the background and be of such size, shape and color as to be readily legible, during daylight hours, from a distance of 50 feet while the vehicle is not in motion, and such display shall be kept and maintained in such manner as to remain so legible. If desired, display may be accomplished through use of a removable device so prepared as otherwise to meet the identification and legibility requirements of the regulations in this part.

Applicant will be further directed to provide notice to the Commission in writing within 45 days of the commencement of service whether he wishes this application to be construed as an application for permanent authority. Finally, Mr. Bannister will be ordered to cease and desist from activities found to constitute violations of the Compact, and the Commission shall retain jurisdiction in this matter to monitor compliance with this mandate.

THEREFORE, IT IS ORDERED:

1. That Ernest H. Bannister, Sr., trading as Bannister Transportation Service, is hereby granted temporary authority to engage in charter operations pursuant to contract with Friendship Heights Village Council, transporting passengers between points within Friendship Heights Village bounded by Wisconsin Avenue, Willard Avenue and North Park Avenue, Chevy Chase, Md.

2. That Ernest H. Bannister, Sr., trading as Bannister Transportation Service, is hereby directed to file with the Commission, within seven days from the date of service hereof (a) a certificate of insurance in his own name, (b) a notarized statement certifying compliance with Commission Regulation No. 68 governing identification of his vehicle, and (c) two copies of his WMATC Temporary Authority Tariff, including copies of the executed contract with Friendship Heights Village Council.

3. That upon compliance with the requirements of paragraph 2 above, the temporary authority granted herein shall become effective on the ninth day following the date of service hereof, and shall continue in effect for a period of 60 days until August 12, 1979, unless otherwise ordered by the Commission.

4. That Ernest H. Bannister, Sr., trading as Bannister Transportation Service is hereby directed to provide notice to the Commission in writing within 45 days of the commencement of service whether it also wants this application construed as an application for a certificate of public convenience and necessity.

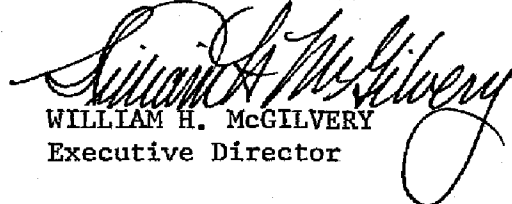
5. That unless Ernest H. Bannister, Sr., trading as Bannister Transportation Service, timely complies with the mandates of paragraph 2 above, within the time established, or within such additional time as maybe authorized by the Commission, the grant of temporary authority

herein shall be considered null and void, and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

6. That Ernest H. Bannister, Sr., trading as Bannister Transportation Service is hereby directed to cease and desist from any activity on behalf of Bannister Enterprises, Inc., including exercise of management discretion or any other act involving use of the name, property, personnel or facilities of Bannister Enterprises, Inc., without first obtaining the approval of the Commission pursuant to Title II, Article XII, Section 12 of the Compact, and is further directed to maintain separate and independent books, records and accounts reflecting only the operations of Ernest H. Bannister, Sr., trading as Bannister Transportation Service.

7. That Ernest H. Bannister, Sr., trading as Bannister Transportation Service is hereby directed to cease and desist from engaging in or rendering transportation for hire as a carrier of persons between points in the Metropolitan District without first obtaining appropriate authority therefor pursuant to Title II, Article XII, Section 4(b) or Section 4(d)(3) of the Compact, provided, however, that this directive shall not be construed as extending the certification requirements of said sections to bona fide taxicab service conducted in limousine type vehicles having a seating capacity of eight passengers or less in addition to the driver thereof.

BY DIRECTION OF THE COMMISSION:


WILLIAM H. MCGILVERY
Executive Director